

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

LAURA JANIECE WONS,

Plaintiff and Respondent,

v.

KIRSTEN FERRY,

Defendant and Appellant.

F073347

(Super. Ct. No. MCV062795)

OPINION

APPEAL from orders of the Superior Court of Madera County. Michael J. Jurkovich, Judge.

Kirsten Ferry, in pro. per., for Defendant and Appellant.

Laura Janiece Wons, in pro. per., for Plaintiff and Respondent.

-ooOoo-

Appellant Kirsten Ferry appeals in propria persona following two adverse orders entered by the trial court. The first denied her motion to modify a restraining order entered in 2013, originally requested by respondent Laura Janiece Wons, also proceeding in propria persona. The second imposed sanctions for violation of that restraining order. Appellant raises a multitude of issues related to these orders and the litigation history underlying them. More specifically, appellant contends the original 2013 restraining

order was improperly granted, that the trial court improperly denied a prior motion to modify and improperly granted a prior request for sanctions in 2014, and that the current orders are equally infirm. For the reasons set forth below, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant and respondent have a long history of litigation and animosity between them. Although not directly relevant to the properly raised issues in this appeal, we first outline that history generally for context.

According to respondent, she and a man named John Ferry were in a relationship. Around the time that relationship ended, Mr. Ferry met appellant, whose maiden name was Kirsten Peterson. Mr. Ferry and appellant eventually married. At some point, appellant and Mr. Ferry came to believe that respondent was part of a conspiracy with other individuals to fraudulently obtain money through various plans, and that respondent had conned Mr. Ferry out of substantial sums of money. Appellant, on behalf of Mr. Ferry and later on her own behalf, began filing lawsuits against respondent to right these perceived wrongs. The first lawsuit was filed in the San Mateo Superior Court.

The parties eventually entered into a stipulated resolution to the pending actions between them, which appellant came to believe was another sham transaction designed to hide respondent's alleged conduct. Despite the fact this settlement should have resolved all outstanding cases, appellant increased her litigation efforts, claiming they were necessary to correct the sham resolution.

In the course of these actions, appellant sent respondent numerous aggressive, threatening, and allegedly abusive messages. This conduct resulted in a December 12, 2013 restraining order issued by the Madera Superior Court in case No. MCV062795. This order issued pursuant to Code of Civil Procedure section 527.6,¹ based on findings that appellant's telephone calls "represented a credible threat of violence" and

¹ Undesignated statutory references are to the Code of Civil Procedure.

“constituted a course of conduct” that served no legitimate purpose, and, as a whole, were designed to and did cause respondent to fear for her safety. The resulting order prohibiting any contact between the parties was set to last until December 12, 2016. Recognizing, however, that the parties remained embroiled in several pending litigations, the court structured its order as follows:

“To the extent necessary to participate in litigation between [respondent] and [appella]nt, it shall not be a violation of this order for [appella]nt to communicate, IN WRITING ONLY, with [respondent]. Such communication shall only be related to pending litigation, and only to the extent required by such litigation. This shall not be read to permit [appella]nt’s communication to be otherwise harassing in nature. Simply referring to a pending case in the communication does not make otherwise harassing comments acceptable.”

Appellant immediately sought to dissolve this injunction and appealed in prior case No. F069007, *Wons v. Ferry*, when that request was denied. No briefs were filed despite several extensions granted due to appellant’s hospitalization and other issues, and the case was ultimately dismissed after appellant abandoned the appeal.

In that same time frame, several other issues arose. Thus, in February 2014, the trial court denied another motion to dissolve the restraining order based on allegations evidence had been improperly excluded from the original proceedings and respondent had unclean hands and thus could not seek equitable relief in the form of a restraining order. Then, in March 2014, the trial court sanctioned appellant pursuant to section 177.5 for violating the restraining order by sending multiple additional voice messages to respondent that, although they referenced ongoing litigations, were harassing in nature and not related to any legitimate litigation purpose. This resulted in a fine of \$500.

The court came to learn that appellant had been in the hospital at the time of the original sanctions order. It responded by vacating that order and providing appellant

additional time to oppose the sanctions request. After additional submissions, however, it again imposed the \$500 sanction.

More directly relevant to the issues raised in this appeal, respondent again requested sanctions be imposed against appellant in July 2015, claiming that despite the prior sanctions order, appellant continued harassing her through improper voice mails and letters. In response to this request, appellant moved to disqualify the trial judge, a request that was struck, sought to strike portions of the request for sanctions, and again moved to modify the injunction. The modifications requested included several technical issues, such as including respondent's full name and more fully describing the parties' relationships, among others. Substantively, appellant requested additional clarification on the means of written communication that would be permitted given the multiple pending lawsuits, and asked to have the order terminate early.

The trial court requested additional briefing before scheduling and holding hearings on the various issues raised. Then, on November 30, 2015, it issued two orders. One denied appellant's motion to modify the restraining order. The other granted respondent's motion for sanctions.

On the motion to modify the restraining order, the court noted appellant had provided no legal authority under which the court could act as requested. Still it reviewed the grounds raised, made a technical change regarding appellant's birthday, and, determining no basis had been presented to revisit the court's prior findings, denied the remaining requests. On the sanctions request, the court noted it had authority to issue sanctions under section 177.5 and that appellant had violated the restraining order by leaving multiple voice messages, despite being limited to communications by writing, that clearly disturbed respondent's peace. The court also identified several letters that were representative of appellant's harassing conduct. While these letters mentioned the ongoing lawsuits tangentially, they were also filled with abusive vitriol toward respondent that the court found violated the restraining order. In its analysis, the court

recognized appellant's arguments that her conduct was protected by the litigation privilege and the anti-SLAPP² laws but rejected these defenses. Based on its findings, the court sanctioned appellant in the amount of \$1,000, to be paid in monthly installments of \$100 until paid.

Appellant timely appealed from the November 30, 2015 orders.

DISCUSSION

Appellant's brief raises several points related to the orders issued in this case. As a litigant acting in propria persona, appellant's briefing sometimes raises points and issues tangential to those properly before this court.³ Despite this, this court has attempted to identify and discuss each of the points raised. The issues as the court understands appellant's briefing are as follows: (1) a claim that this court has the authority to review the initial grant of the restraining order from 2013 and thus can review both sanctions orders and both denials of modification requests; (2) a claim that the most recent sanctions orders cannot stand under the anti-SLAPP laws because respondent has unclean hands; and (3) a claim that the trial court incorrectly denied the

² "Anti-SLAPP" refers to a strategic lawsuit against public participation (SLAPP). (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 57.)

³ In her reply brief, appellant raises several objections to respondent's brief, primarily focusing on California Rules of Court she contends are not satisfied by the submission. The court has reviewed these objections and, given that appellant and respondent are both proceeding in propria persona, overrules them. Both parties' briefing has suffered from technical rules violations, but their arguments and positions are sufficiently stated for review. The court notes that its ruling relies only on those documents properly contained within the record on appeal and, thus, appellant's arguments that certain documents were improperly attached to respondent's brief are moot. With respect to the various requests for judicial notice deferred pending resolution of this appeal, the court denies them on the grounds that the documents requested for notice are either not relevant to or not cited in the resolution of this appeal, thus mooting the requests. Finally, the court denies appellant's motion to strike portions of the record on appeal and overrules appellant's objections to respondent's noticing violations as moot. The court did not rely on the contested pages of the record and respondent's brief was ultimately accepted for filing and served.

latest motion for modification and wrongly imposed sanctions under the facts presented. Upon review, we find none of these arguments require we reverse the trial court's orders.

Appellant's Request to Review Prior Orders

Appellant's brief raises several issues with respect to prior orders issued by the trial court. To the extent appellant seeks to have us determine that the initial restraining order was improper, we lack jurisdiction to do so. "The time for appealing a judgment is jurisdictional; once the deadline expires, the appellate court has no power to entertain the appeal." (*Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 56.) A notice of appeal must be filed within 60 days after (1) the superior court clerk serves a file-stamped copy of the judgment, or (2) a party serves a file-stamped copy of the judgment on the person filing the notice of appeal. Otherwise, the notice must be filed within 180 days after entry of judgment. (Cal. Rules of Court, rule 8.104(a)(1).) The initial order in this case was filed in 2013, our jurisdiction to hear an appeal from that order has therefore long since passed.

Appellant contends that we have an inherent jurisdiction to review the underlying order because of respondent's fraudulent conduct. While appellant notes she previously attempted to appeal the order in case No. F069007, she claims that appeal was abandoned due to respondent's fraudulent actions in settling other disputes. Even if we were to accept this factual premise, appellant's argument cannot overcome the fact that our jurisdiction is statutory in nature and is thus subject to the statutory restrictions in place. As we have no jurisdiction to belatedly review or change the prior restraining order, we proceed through appellant's remaining issues with the understanding that the prior order was a legally enforceable court order. For similar reasons, to the extent appellant argues we should review the first sanctions order and first denial of appellant's motion to modify the restraining order, we lack jurisdiction to review those orders as well.

Appellant's Legal Arguments Against Sanctions

With respect to appellant's second issue, appellant raises two legal bases upon which she claims the trial court was precluded from sanctioning her for having contact with respondent. Both turn on the fact that litigation was pending between her and respondent. In the first, appellant claims the anti-SLAPP laws protect her conduct. In the second, appellant intones that her conduct is protected by the litigation privilege. Both arguments fail for the same logical reason; appellant was not sanctioned for her pursuit of litigation generally, but instead for violating a valid court order that sets how she must proceed given prior findings that her behavior warranted a restraining order.

In addition, upon review we can identify no legal principle that would preclude sanctions for violating a restraining order solely because the harassing conduct occurs during the course of pending litigation. The anti-SLAPP statute provides that a "cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech ... in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (§ 425.16, subd. (b)(1).) Thus, under its own language, the anti-SLAPP statute is not a bar to all claims arising from litigation. Rather, as amply demonstrated in the cases applying the statute, it is a bar to claims otherwise lacking merit. (See *Navellier v. Sletten* (2002) 29 Cal.4th 82, 89 ["Only a cause of action that satisfies *both* prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning *and* lacks even minimal merit—is a SLAPP, subject to being stricken under the statute"].) In this case, assuming appellant properly raised a claim that the sanction request is a retaliatory action and assuming that the statute applies to such claims, the trial court's order shows that it considered the merits of respondent's claim and found that respondent could, and in fact did, prevail on the claim that appellant violated the court order. Accordingly, the anti-SLAPP statute does not preclude the sanctions order.

Similarly, as the trial court noted, the litigation privilege protects against separate tort actions arising from statements made in judicial proceedings. (*Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, 1241–1242.) It does not, therefore, protect against enforcement actions arising from the violation of court orders, even when such conduct occurs in the course of litigation. To hold otherwise would vitiate the court’s authority to control its courtroom through contempt and similar proceedings. Accordingly, appellant’s legal arguments do not demonstrate the court could not impose sanctions for violation of the restraining order.

Indeed, our conclusion that sanctions may issue for violation of a court order, even when the underlying conduct occurs in the context of ongoing litigation, squares with the case law upholding sanctions in similar contexts. As an example, in *People v. Ward* (2009) 173 Cal.App.4th 1518 (*Ward*), the trial court ordered counsel not to mention the words “ ‘prosecutorial misconduct’ ” in front of the jury. Despite this order, defense counsel argued to the jury in closing that the prosecutor had committed prosecutorial misconduct in presenting their case. (*Id.* at pp. 1523–1524.) Based on this conduct, the trial court fined defense counsel \$200 under section 177.5. (*Ward*, at p. 1525.)

This fine was upheld on appeal. As the appellate court explained, the right to effective advocacy was no bar to the sanction order. “Appellant had the opportunity to present his points and argue his position, i.e., engage in advocacy on behalf of his client. Sanctions were not imposed on appellant for persistently and vehemently arguing his point or for being wrong in his arguments. Sanctions were imposed for making an argument and using certain words in front of the jury, as opposed to in front of the court, despite a direct order that he not do so. The imposition of sanctions did not interfere with appellant’s fulfillment of his duty as an attorney.” (*Ward, supra*, 173 Cal.App.4th at p. 1531.) Similarly, here, the restraining order did not preclude appellant from contacting respondent about the ongoing litigation. Rather, it limited the ways in which that contact could occur—both by requiring communications be in writing and ordering they not be

harassing in nature. Sanctioning conduct that violated that order thus did not eliminate appellant's litigation rights, but rather balanced the right to protect respondent from conduct previously determined to support a restraining order against appellant's right to pursue pending litigation.

Appellant's Claim the Trial Court Orders Were Erroneous

Finally, appellant claims the trial court erred in awarding sanctions based on her conduct and in denying her motion to modify the restraining order. We do not agree.

Standards of Review and Relevant Law

“ ‘A judicial officer shall have the power to impose reasonable money sanctions, not to exceed fifteen hundred dollars (\$1,500), notwithstanding any other provision of law, payable to the court, for any violation of a lawful court order by a person, done without good cause or substantial justification. This power shall not apply to advocacy of counsel before the court. For the purposes of this section, the term “person” includes a witness, a party, a party's attorney or both.’ (§ 177.5.)

“The imposition of monetary sanctions under section 177.5 ‘ “ is within the discretion of the trial court. That discretion must be exercised in a reasonable manner with one of the statutorily authorized purposes in mind and must be guided by existing legal standards as adapted to the current circumstances.” ’ [Citation.] Discretion is abused when it exceeds the bounds of reason, all of the circumstances being considered.” (Scott C. Moody, Inc. v. Staar Surgical Co. (2011) 195 Cal.App.4th 1043, 1048.)

“[W]here the party protected by a restraining order has *already* made the required showing to obtain a renewal of the order, and the restrained party later seeks to terminate the restraining order, the burden is on the restrained party to show by a preponderance of the evidence that one of the circumstances set forth in [] section 533 is present and justifies a termination of the restraining order.” (Loeffler v. Medina (2009) 174 Cal.App.4th 1495, 1504.) “As in any review of an order denying a motion to

dissolve an injunction, we apply an abuse of discretion standard of review.” (*Id.* at p. 1505.)

Appellant Has Not Demonstrated Error

Upon review, with respect to both the sanctions order and the court’s denial of appellant’s motion to modify, we find no abuse of discretion in the trial court’s orders. Taking the denial of appellant’s motion to modify first, we note that the court did make one technical change relating to birth dates but denied appellant’s substantive requests. According to the trial court, appellant had identified no law that would permit modification. In addition, upon its own review, the court found appellant’s arguments unavailing. When discussing the language limiting communication, the court confirmed that it intended the language chosen and saw no need to modify it further. On the request to terminate the order, the trial court saw no reason to terminate the order prior to its normal terms.

Even accepting that the trial court had the authority to modify the prior restraining order, a point appellant’s brief provides no authority for and the trial court believed it could not do, any modification, like any order terminating the restraining order, would require appellant to show by a preponderance of the evidence that such action was appropriate. (See *Loeffler v. Medina*, *supra*, 174 Cal.App.4th at p. 1504.) With respect to modifying the communication language, the trial court reviewed its prior order and determined the language both correctly stated its intent and remained appropriate. We see no abuse of discretion on this point. While appellant contends that phone contact was necessary because respondent was taking too long to respond to written requests, there is no indication in the record that this communication was affecting the litigation and, even if it were, appellant would have had an opportunity to redress those problems by raising them with the trial court. Moreover, upon review of appellant’s arguments, we see no evidence that the language chosen by the court was improperly vague or improper given

the situation. Accordingly, we find no error in its discretionary determination that it would not modify the order.

Considering appellant's request to terminate the order, we likewise conclude the trial court did not abuse its discretion by denying appellant's request. In this context, it is important to note that the court's written order came on the same day it found appellant had continued to violate the restraining order through multiple telephone messages and statements that the court concluded were harassing in nature. While we discuss that issue further below, finding no abuse of discretion in the sanctions order issued, we conclude that the evidence of ongoing disputes as to compliance, the fact, as the court noted, that appellant's request for termination would function as an immediate dissolution, and the lack of evidence demonstrating the restraining order should be dissolved all demonstrate the court did not abuse its discretion when denying appellant's request.

Finally, we likewise find no abuse of discretion in the trial court's order for sanctions. The trial court's order identifies specific examples of how appellant violated the restraining order. These included sending multiple consecutive phone messages that violate the restraining order by failing to limit communication only to writing, including material not related to any pending litigation, and containing language that the court concluded disturbed respondent's peace. The court also identified one letter containing language it considered harassing as an example of the written correspondence appellant had sent. This letter segment analogized respondent to "a woman who reportedly killed her child for the media attention" and claimed respondent was utilizing the courts to harm appellant. The record shows these types of statements continued even after the trial court previously sanctioned appellant for similar conduct. As the underlying restraining order remained valid, these facts provided a sufficient basis for the court's discretionary sanctions order.

DISPOSITION

The trial court's November 30, 2015 orders denying appellant's motion to modify the 2013 restraining order and imposing sanctions are affirmed. The requests for judicial notice filed December 28, 2016; August 24, 2017; July 11, 2018; and January 22, 2019, are denied. The motion to strike filed February 14, 2017, is denied. The objections to respondent's noticing violations filed August 3, 2018, are denied.

Costs are awarded to respondent.

HILL, P.J.

WE CONCUR:

LEVY, J.

DETJEN, J.